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Citation for final published version:

Dezalay, Sara ORCID: <https://orcid.org/0000-0001-5434-3613> 2017. African extractive economies and connected histories of globalization: a case study of the 'Africa' bar in Paris. SSRN 10.2139/ssrn.3004973 file

Publishers page: <http://dx.doi.org/10.2139/ssrn.3004973>
<<http://dx.doi.org/10.2139/ssrn.3004973>>

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AFRICAN EXTRACTIVE ECONOMIES AND CONNECTED HISTORIES OF GLOBALIZATION

A case study of the 'Africa' Bar in Paris

Scholars who like their colonialism very colonial have trouble dealing with the fragmented, uneven, mediocre nature of colonial administrations, as well as the creativity with which African communities reconfigured the structures and ideologies imposed on them.¹

You can be a specialist of Africa. Or a specialist of project-finance. Some people say they 'do' Africa.²

Abstract

With the 2008 global financial crisis and Chinese economic growth, the African continent has re-emerged as a source of mineral riches, a boon for the expansion of global markets, and a new site of legal globalization. Yet - discussions on these developments tend to reflect the protracted political and development 'dependency' of African states, with lawyers involved in corporate dealings on the continent either denounced as mercenaries at the service of neo-colonial 'looting' or idealized as missionaries of the rule of law. The 'Africa' Bar in Paris - the empirical focus of this presentation - emerges as a microcosm of connected and enduring histories that position lawyers operating on the African continent in a 'cross-roads' space between politics and economics, shaped by the legacies of the ties between Paris the *métropole* and its former African colonies. A key intermediary site for corporations seeking to extract natural resources on the continent and invest in its emerging markets, Paris was also a beachhead for the expansion of US-led globalization of corporate law in Europe from the 1980s. On the basis of biographical interviews, this presentation traces the social and professional structure of this 'Africa' Bar in Paris. Dominated by predominantly French, male, lawyers operating in the Paris branches of major US and UK law firms, this Bar operates under the contradictory shadow of the clout of the *Françafrique* and the restructuring of commodities markets under the impetus of financialization and global regulatory frameworks. These on-going developments highlight the continuous connections between corporate and state power in the trajectory of the state and legal markets on the African continent and help trace the stakes of an open research agenda on extractive economies, knowledge, law and politics on the African continent.

1. The Good, the Bad and the Ugly

In the last fifteen years, the African continent has re-emerged as a boon for the expansion of infrastructure and telecommunication markets and a source of primary commodities - oil and key minerals. In 2013, fuel and mineral exports reached \$397 million, 15 times more than development aid into the continent.³ Investments on infrastructures have doubled in the last ten years continent wide, while foreign direct investments have risen from \$14 million in 2004 to \$73 million in 2014.⁴ This

¹ Cooper 2014.

² Personal interview, A.M.D.F.A., Fairlinks, Paris 2.7.2015.

³ See Burgis 2015; OECD, <http://stats.oecd.org/Index.aspx?DataSetCode=DACGEO>.

⁴ See Business. Special Report on Africa, *The Economist* April 16, 2016 ; D. Barton & A. Leke, 'Three reasons things are looking up for African economies', World economic Forum, 5 May 2016.

growth has fuelled the recent interest of multinational corporate law firms, including prominent UK members of the Magic circle in London, and Wall street law firms, set out to establish 'Africa' offices in rising hubs on the continent - Casablanca, Johannesburg or Abidjan - as well as in global financial capitals and former *métropoles*: New York, London or Paris. The mega corporate law firm Denton has opened up local branches all over Southern Africa - while other US, UK, French, Portuguese law firms establish themselves in Northern, Western and Eastern Africa: whatever the strategy, the driving force has been infrastructure, power, oil and gas.

Yet, this 'Africa rising' picture contrasts sharply with the Afro-pessimism image of a continent, invariably depicted as an indiscriminate geographical whole, doomed by the 'resource curse,' poor governance, weak legal institutions, corruption, violent conflict or political instability. As highlighted by a professional legal journal: on the face of local hurdles – as much as the volatility of commodities markets: 'an Africa office is no magic door to deals.'⁵ Beyond this pendulum of narratives, the researcher interested in tracing the roles played by lawyers in African extractive economies is confronted with a set of challenges. 'It's a Whites' business!' interjected a specialist of the economy of extractive contracts: 'At the negotiation table sit the Good, the Bad and the Ugly: the World Bank, the African civil servant, and the lawyer.'⁶ Discussions on lawyers do not escape this protracted dependency lens. They are either hailed as missionaries of the rule of law in a continent marked by failed colonial legacies and transplants (e.g. Halliday, Karpik & Feeley 2014); or they are the new mercenaries of neo-colonial corporate interests (e.g. Burgis 2015). The spectre of neo-colonialism and imperialism and with it, the ever-present suspicion of *affairisme*, is intensified by an industry driven by an economy of appearances. Talks of mining 'booms' or of the 'perfect storm' are mired with rumours. Not only are extractive contracts for the most part sealed under a veil of secrecy, but accurate data on actual extractive potentials, projects and economic returns are hard, if not impossible, to come by. The market for primary commodities itself is distorted by the entanglement of shadow and official economic routes and the multiplicity of agents involved: local intermediaries, state, quasi-statal and private corporations as well as vulture funds, regulation authorities and international financial institutions. Should, further, corporate lawyers themselves be constructed as an object of inquiry? Certainly not, *a priori*, if the focus is restricted to the highly technical intricacies of the law they produce: competition, M&A, project-finance...

Much more so, to the contrary, if one follows the paths opened by a political sociology of lawyers not as legal professionals, but as power brokers. Studies on lawyers in globalization have underscored the position of lawyers as an 'intermediary elite' or 'double agents' whose capacity to navigate contradictory social, political and economic interests helps explain transformations of state power and the spill-over of norms and institutions (Dezalay & Garth 2002; e.g. Vauchez a. & b. 2012).

⁵ M. Tayler, 'An Africa office is no magic door to deals,' *The Lawyer*, 21 March 2016

⁶ Personal interview, A.M.D.F.A., Fairlinks, Paris 2.7.2015.

This approach has proven particularly fruitful in African contexts (S. Dezalay 2015a): tracing the trajectories of lawyers across space and time is a way to overcome apparent contradictions. Lawyers are not just missionaries of the rule of law, or mercenaries of neo-colonial interests: they are both. Applied to the question of extractive economies, this approach is useful as it links dimensions of power that are seldom considered together: law, politics and economics. The first reason of this segmentation of scholarship is the trap noted by P. Bourdieu: 'To attempt to think about social objects such as the state or the professions which present themselves as natural, is to risk analysing them according to conceptual categories constructed by and for these institutions (Bourdieu 1993:51). This trap is exacerbated by the blind spots - or false assumptions - inherent to the law. The analytical category of the legal profession tends to channel the attention 'into the legitimating rhetoric that sustains professional profits and privileges' (Dezalay and Garth 2012). This difficulty is reinforced in the case of scholarship focused on the African continent, where there is a singular knowledge gap on legal professions, compared to other regions (with few exceptions, e.g. Gobe 2013). Research on law, furthermore, is deeply segmented. The literature has tended to reflect the ebb and flow of policy pulls and disciplinary hierarchies, with two main focus of inquiry. The 'law and development' trend, for the most part interested in legal institutions as a vehicle to promote development and societal change (e.g. Trubek & Santos 2006), remains silent on the power relations at play, and how those contribute to the success or failure of legal transplants. On the other hand the vast legal pluralism literature remains entrenched in a state/non-state dichotomy that is paradoxically a-historical as it does not take into account how social transformations - including successive globalizing moments in the continent - have impacted on the trajectory of the state and state-societal relations. For both trends there is a need to dis-entangle the production of knowledge on law in Africa from imperial and post-imperial legacies (e.g. Steinmetz 2013; S. Dezalay 2015 b): this reflexive exercise, indeed, is a necessary detour to map out and understand what appear as otherwise irreconcilable political, ideological and social positions, notably the opposition between 'looting' corporations and 'benevolent' NGOs at the service of local communities and a human-faced development.

Focusing on lawyers is also a way to assess the prominence of extractive economies on the African continent from pre-colonial eras to the present, and their impact (e.g. Ellis 2012). Recent research on empires in world history has stressed the pragmatic accommodating capacity of empires, and their role in capitalist expansion (Cooper and Burbank 2010; Bertrand 2015) as well as the connectedness of empires in relation to one another and in the *longue durée* (Subrahmanyam 2005). This research provides fruitful avenues in underscoring the embeddedness of the 'nation-state' as a modern political outcome of imperial legacies. As such, extractive economies provide an entry-point to trace both the transformation of the postcolonial state in African settings, and the history of the uneven and unequal connections between Africa and the world (Cooper 2014). Legal historians have also emphasized how the law played a key role of intermediation, to accommodate the limited space of

deployment of colonial rulers and as a modicum of legitimation of colonial power (e.g. Benton & Ross 2013). There is a need, however, to further document who these intermediaries were and how they operated. It is but an economic truism in media accounts that to do business on the African continent outsiders need to find local partners to 'smooth their paths along the corridors of power' - especially if these new-comers are not corporations with an imperial past⁷: in Africa perhaps more than elsewhere, social networks, economic routes and political institutions have been shaped by these imperial flows and 'counter-flows' (Ibhawoh 2013). The positions, practices and trajectories of lawyers provide such a key to trace this interweaving between the local, the national and the global, as well as the interplay between knowledge, law, economics and politics.

The research strategy suggested in this paper is to 'zoom in and out' as a way to map out these connections over time (Cooper 2014). It starts with the specific example of the 'Africa' Bar in Paris to then enlarge the focus towards stakes raised for an open research agenda on the connections, in the *longue durée*, between lawyers, extractive economies, state transformations and the position of Africa in globalization. As an empirical object of inquiry, Paris is exemplary: due to its position as a former colonial *métropole*, but also as a beach-head in the expansion of US and UK corporate law firms into Europe from the 1980s - and now towards Africa. The stories of this microcosm are based on a qualitative methodology that can be described as relational biography⁸: asking respondents *who* they are, is a way to trace the power structure of this space, the resources (knowledge, social, academic, political) that play into the (re)production of its hierarchies, and to assess its boundaries. Similarly to the 'corporate' Bar in Paris, as elsewhere, this Bar is a 'crossroads' space where corporate power, politics and social capital play a crucial role in the distribution of positions (Vauchez 2012 a. & b.). But it is not just a 'corporate' Bar. It is a space that is offshore yet deeply connected to power structures in African settings. Dominated by predominantly French, white and male lawyers, it is embedded in the corporate, political and social networks that tie Paris to its former colonies. However, the smoothing out, polishing and reconversion of these networks - under the impetus of global regulatory frameworks, US dominance and the competition with increasingly powerful emerging economies like China - help explain the prominence taken by US and UK corporate law firms in this small market of insiders. But the embeddedness of this space in imperial legacies also accounts for the two apparently contradictory faces of legal globalization at play in this restructuring of extractive

⁷ E.g. 'Is it worth it? For outsiders in particular, investing in Africa is strewn with hurdles', *The Economist*, 16 April 2016.

⁸ To date, I have conducted about thirty interviews with lawyers from corporate law firms as well as other members of the Bar in Paris. Except for William Bourdon and Pascal Agboyibor, whose portraits are drawn below, and who are well-known figures, all names of respondents are kept anonymous. I built this fieldwork incrementally, based on my previous research (in the context of my PhD and postdoctoral work) on the transformation since the Cold war of militant fields of human rights; the institutionalization of international criminal law; as well as the social and professional structure of international dispute settlement mechanisms. Concerning the 'corporate' lawyers operating in Africa, from Paris, I used what could be described as a 'swarming' technique: based on professional rankings of corporate law firms, participant observation at professional conferences, and interviews so as to identify informants, and key players within this small market.

markets - corporate and human rights - and their uneven, patchy and fragmented effects. Similarly to previous globalizing moments of the African continent, indeed, those are accommodated and reconfigured by power structures at the local level and the intermediation roles played by lawyers.

2. Walking the tightrope: two exemplary trajectories

William Bourdon: juggling between the powerful and the wretched of the Earth

The head of the NGO Sherpa, created in Paris in 2001 to 'protect and defend victims of economic crimes,'⁹ William Bourdon is a prominent advocate of the criminalization of corporate crimes: this lawyer became known for the amicable settlement he struck in 2005 on behalf of eight Burmese who had lodged a complaint against the French firm Total for forced labour; more recently, he endorsed the cause of whistle-blowers as the lawyer of Antoine Deltour - the alleged source of part of LuxLeaks -, Edward Snowden, Hervé Falciani (ex-HSBC) and Stéphanie Gibaud (ex-UBS). While Vice-secretary general (1994-1995) and Secretary general (1995-2000) of the French human rights NGO International Federation for Human Rights (FIDH), he was one of the vocal proponents of the Rome Statute for the International Criminal Court throughout the 1990s; the initiator, on behalf of the FIDH, of the complaint for crimes against humanity lodged against Hissène Habré in Senegal in 2000 which triggered a wave of universal jurisdiction complaints against African former heads of state (see Seroussi 2008); he was also one of the drivers of diverse complaints against sitting and former African heads of state for their 'ill-gotten wealth' in France, on behalf of Sherpa and Transparency International; and the defender of two French detainees at Guantanamo...

But William Bourdon is also the counsel of private corporations - though his notoriety, as he explained, has driven some US and UK corporations away: 'I think they are wrong, they are wrong in thinking that being a cause lawyer prevents me from having a cynical and manipulative side. I can be as cynical as they are.'¹⁰ What he described in his legal practice as 'a constant juxtaposition, this medley between politicians, the powerful and the wretched of the Earth' is not simply a question of accommodating economic constraints by 'playing on different fronts.' It is a capacity of circulation that can be explained by Bourdon's background and trajectory, and his positioning at the intersection of multiple poles of power in France - politics, economics, militant -, a capacity in which his family capital played an instrumental role: he is the grand-son of the engineer in chief at Michelin, and the great-grand son of one of the founders of Michelin, the rubber tire corporation, grown into a transnational and powerful corporation out of rubber plants in Vietnam and other parts of the French

⁹ See <https://www.asso-sherpa.org/accueil> (last accessed 26.5.2016).

¹⁰ Personal interview with William Bourdon, Paris 21.12.2012, my translation from French. All further quotes are derived from this interview.

colonial Empire. Originally targeting a diplomatic career (Sciences-Po, the French administrative school, l'*École nationale d'administration* and the Quai d'Orsay), he ended up studying law and registering to the Paris Bar in 1980. He started his career with internships with two tenors of the Paris Bar: Philippe Lemaire, a criminal lawyer and one of the proponents of the abolition of the death penalty in the 1970s, and Marc Barbé, a founder of one of the first French corporate law firm, BCTG et Associés, set up in Paris in the early 1970s with a portfolio of powerful corporate clients built up by Barbé while at Stephenson Harwood in London (Nike, Cadbury...). Bourdon then set up his own law firms from the mid-1980s. He described his stint at the FIDH as a 'parenthesis': 'all this very strong engagement in international criminal law, it spurred jealousy, envy, petty manoeuvres...I believe there is a pernicious cancer that constantly threatens NGOs...it's bureaucratization...we strive to pave a way between the naivety of part of civil society which gets privatized through public subsidies, co-opted into public administrations - a dangerous partnership - and the near-systematic ideologisation which denounces any corporate endeavour.' 'If economic actors tell you that they are losing market shares in Africa, you need to hear the argument. This is what enables me to circulate between spheres of power and conflicting interests.'

Pascal Agboyibor: not just 'the' African of the corporate Bar in Paris

Arms folded on a grey suit and blue shirt - the obligatory uniform of the corporate lawyer, Pascal Agboyibor hints by an imperceptible smile the triumph that brought him to the cover of the monthly issue of *Forbes Afrique* in February 2015.¹¹ This 47-year old Togolese lawyer is one of the very few – there are but a dozen – Africans working at major multinational corporate law firms, what more, as a sitting member of the administrative council of the US firm Orrick Herrington & Sutcliffe LLP and the head of its 'Africa' department in Paris. He is hailed as a 'shadow power broker' of transactions between States and foreign corporations in the African continent: with a 60 people strong department, Orrick, he claims, invests a huge proportion of its activities - 20% - in Africa. 'I was taught very early on that I would become a lawyer.'¹² The law, for Agboyibor is an acute political and family matter. His father, Yawovi Agboyibo, former president of the Lomé Bar, political opponent and prime minister in the transition between the Gnassingbé regimes (in 2006-2007) was a prominent figure of the transition of Togo to a multi-party system in 1991. Yawovi Agboyibo had also turned to corporate law in the early 1970s by integrating the very first law firm of the country,¹³ after studying law in France. During an era when the newly independent state of Togo was massively recruiting into the

¹¹ M.E. Ngisi, 'Pascal Agboyibor, l'avocat qui murmure à l'oreille des grands', *Forbes Afrique*, February 2015: 33-39.

¹² Personal interview with Pascal Agboyibor, Paris, 22.5.2015, my translation from French. Subsequent quotes derived from this interview.

¹³ Founded in 1937 by the French lawyer Raymond Viale.

administration, this choice appeared like an anomaly. But investing in corporate law had insured the conversion of the resources of this royal family, evinced from local power since the 1930s¹⁴ by the French colonial administration, towards the political and economic networks tying the country to its former *métropole*.

One generation later, this proximity has contributed to propel Pascal Agboyibor within the very close-knit corporate Bar in Paris, first in 1993 at Jeantet et Associés, one of the French pioneers of corporate law, before joining the Paris branch of the UK firm Watson, Farley and Williams in 2000, whose teams integrated with Orrick, Herrington & Sutcliffe LLP in 2002. He became a partner at Orrick in 2003. After studying law in Lille, Pascal Agboyibor benefited from a portfolio of African relations compiled during a secondment at the African Development Bank in Abidjan in 1996 and introductions from his father - notably to take on the latter's arbitration disputes between the Democratic Republic of Congo and 'vulture funds'.¹⁵ His trajectory thus unveils a 'layered' habitus pointing to the multiple historical strata of legal globalization on the African continent as much as their connexions with local struggles and political hierarchies. But it also points to the wider transformation of corporate legal markets since the 1990s and the prominent yet ambiguous position of Paris in these developments. When he started, Agboyibor strategically invested heavily in securitization, positioning himself in the financialisation of commodities markets, before reinvesting fully his African portfolio in the wake of the 2008 financial crisis, which prompted the search of multinational corporate law firms for new markets in emerging economies, foremost Africa. While only 10% of his practice involved dealings on the continent in 2008, it now accounts for 99% of his time. Though, when he entered Jeantet in the early 1990s, there were but a handful of Africans in corporate law firms in Paris - and elsewhere. His first 'African' case involved the Chad-Cameroun pipeline. 'It was the old argument at the time. They needed an African to sit at the table. There is a deep symbolic violence behind all this. This is probably what made me leave Jeantet. There is a huge difference between French and Anglo-Saxon firms on this.' But the stormy setting up of a branch of Orrick, orchestrated by Agboyibor, in Abidjan in the fall 2014 - it triggered an outcry by the Bar in Abidjan¹⁶ - also emphasizes the difficult, thorny dynamic of this new wave of legal globalization on the continent. 'I am an accident,' explained Agboyibor, 'if it is only me, in Paris, it is not sufficient. You need African-focused lawyers who are concerned, not just mercenaries...Training African lawyers by internationalizing them, that can amount to a form of parachuting.'

¹⁴ Through a continuous re-invention of tradition, the family was recently reinstated as chief of canton by presidential decree under its 'royal' name, Tobgui Messan Agboyibo V, in May 2014.

¹⁵ N. Teisserenc, 'Pascal Agboyibor, le 'bélior noir' à forte tête', *Jeune Afrique*, 7 March 2014. He is in particular one of the counsels of Gécamines, one of the jewels of the mining industry of the DRC, which won in 2012 a long lasting legal battle against the US investment management firm FG Hemisphere, see N. Teisserenc, 'Les fonds vautours ont du plomb dans l'aile', *Jeune Afrique*, 17 September 2012.

¹⁶ N. Pierrepont, 'Orrick's new Abidjan office sparks harsh words from local bar', *The American Lawyer*, 3 November 2014.

3. 'Doing business in Africa': from a market of insiders ... to Paris as a cross-roads space between deals of law and politics of virtue

Far from anecdotal - examples could be multiplied in all African settings as elsewhere - these two portraits emphasize the continuous strategies of double games played by lawyers, which Ernst Kantorowicz (1989) and others in his wake have shown that while at the service of power holders - and thus playing a central role of legitimation of state power - lawyers also needed to distance themselves from politics, as a condition to protect the autonomy of the law, and with it their professional practices. Indeed these strategies are inscribed in the very structure of the law. From Renaissance Italy (see Martines 1968; Brundage 2008), thus, the law was shown to be 'a way to get access to and draw strength from a sovereign administration (such as the city states); to gain an academic and physical distance from state power; and to serve as a go-between for different sovereign administrations and interests' (Dezalay & Garth 2012: 53). Between the state lawyer - e.g. the *jurisconsulte* of a national diplomacy - and the 'merchant of law' at the service of corporations, there is thus a community of situation, defined by the promotion, arguably multifaceted but in the end converging, of legal competency as a necessary condition to negotiate conflicting social interests (see Vauchez 2010). Thus, this 'fluidity of the title' of lawyers (Willemez 1999) enables a capacity, varied according to periods and spaces, to play a multiplicity of social and professional roles between different sectors at the national level - politics, economics and administration (Vauchez 2012 b.) as much as across the local, the national and the global. Further, the renewal of the debate on empires and their legacies has opened up paths to re-assess the roles of lawyers as intermediaires of the state and of globalization (e.g. S. Dezalay 2015; building on Bourdieu 2012). Underscoring law as a central feature of European colonial empires (e.g. Benton & Ross 2013; Ibhawoh 2013), this scholarship has paved the way for research exploring these multifaceted contributions of lawyers as brokers negotiating sovereignty as 'shared out, layered, overlapping' (Cooper and Burbank 2010: 17): between corporate and state power, the colony and the *métropole*, inter-imperial confrontations, and across colonial and post-colonial time and scale. Imperial and post-imperial legal realms thus favoured the positions of lawyers as collaborators and intermediaries: 'Politically mobilized and professionally effective, indigenous lawyers were a Frankenstein of colonial creation, doing much to dislodge the colonial establishment that gave them their profession life' (Oguamanam & Pue 2006); they also enabled the circulations of lawyers, and their roles as go-betweens across time in the postcolonial trajectories of the state - between politics, society and the market, local, national and global scales.

Tracing the trajectories of these two lawyers, thus, is a way to highlight connexions – both spatial and temporal – that otherwise remain invisible. Both underscore the resources, hierarchies and social struggles that are embedded in their habitus and that have been shaped by the transformations of the political and economic relations between Paris and its former colonies. Indeed, the trajectories and

strategies of these two lawyers - and their capacity to circulate across poles of power - need also to be related to the position of the Paris Bar as a 'cross-roads' space that, structurally, is particularly amenable to these multi-scalar double-games. These have been favoured by recent changes in corporate dealings in Africa that are heavily mediated by lawyers: to negotiate extractive contracts, to reform national mining codes and taxation regulations, advise foreign corporations against political, social and economic risks, and increasingly local populations in their contests over the impact of extractive projects for social justice and development. Particularly in France, due to the sulphurous legacy of the *Françafrique*, lawyers involved in dealings in the African continent have been tinted with phantasms and denunciations. The 'Club of Africans,' hailed as the 'white marabouts of the *Françafrique*' (Hugeux 2007), was described somewhat scathingly by an economist - himself, therefore, an outsider in a market dominated from the negotiation of contracts through to the settlement of disputes, by lawyers - as comprising the 'incompetent', the 'suitcase carriers', the 'skilled-ones who know how to carry suitcases' and the 'skilled ones who carry portfolios.'¹⁷ Major corruption cases have unveiled some of the shadow dealings of the *Françafrique* - like the 'Elf case' which erupted in 1994, pointing to major misappropriation of funds, while the French government, under the Mitterrand presidency, was involved in theatres of war in its enlarged 'pré carré' in Central Africa (see Péan 2011). More recently, the operations of the French Bolloré group in Western Africa - aimed at re-kindling the project left dormant since the French colonial era - of a train-loop linking Cotonou in Benin to Abidjan in Côte d'Ivoire have been hurdled with a multi-front legal war. Samuel Dossou, 'Mr Oil' (*Monsieur Pétrole*), in Gabon, founder of the Petrolin Group and close advisor to President Bongo, successfully contested the concession rights of Vincent Bolloré over the Beninese stretch of the project before a Beninese court¹⁸; an arbitration proceeding was also lodged before the Permanent court of arbitration against Niger and Benin by the French engineering firm Geftairail - on behalf of the former French prime minister Michel Rocard - alleging to also have had a prior interest in the project...¹⁹ Lawyers as the discrete but all the more powerful advisors of African heads of state also often occupy the front page of these political-economic scandals: the French-Lebanese lawyer Robert Bourgi, who accused former president Chirac among others - both to the right and the left sides of the French political spectrum - of having received cash ('valises à billets') from African heads of states,²⁰ the late Jacques Vergès, as the shadow advisor of Moussa Traoré in Mali and Abdoulaye Wade in Senegal, François Bozizé in the Central African Republic... The strategy of 'défense de rupture' (defense of rupture) attributed to him - consisting in invoking politics, foremost those of the *Françafrique*, to de-legitimize judicial proceedings - is also regularly reinvested in court, most

¹⁷ Personal interview with A.M.D.F., Fairlinks, Paris, 2.7.2015.

¹⁸ F. Maury & F. Vidjingninou, 'Boucle ferroviaire : Samuel Dossou gagne en appel contre le Bénin et Bolloré', *Jeune Afrique*, 20 novembre 2015.

¹⁹ See 'Boucle ferroviaire: ouverture d'une procédure d'arbitrage contre le Bénin et le Niger,' *Jeune Afrique*, 18.11.2015.

²⁰ V. Hugeux and B. Thiolay, 'Les riches secrets de la Françafrique', *L'Express*, 14.10.2011; see also Péan, 2011.

recently by Emmanuel Altit in his defence of former Ivorian President Gbagbo before the International Criminal Court.²¹

Yet, the originally extremely select 'Africa club' of Paris - comprising a handful of lawyers within a couple of French corporate law firms and a few UK law firms - has recently grown into an enlarged though still restricted market of about twenty lawyers, controlled by a dozen Paris offices of US and UK corporate law firms. But this small market remains dominated predominantly by French male lawyers operating within these UK and US corporate law firms. The trajectory of a prominent member of this market can help explain what can thus be described as a revamping of legal deals in the continent - but only, though, through a slight displacement. 'My specialty now is crisis management. Today, there is not one single country where there is not a risk of coup. But the risk is not only jurisdictional, it is also reputational.'²² This corporate lawyer since 1998 at the Paris office of the UK corporate law firm Herbert Smith Freehills, now a partner, is the head of the firm's Africa practice, principally in the energy and mining sectors - and the mentor of a good part of the new generation of corporate lawyers operating in Africa, from Paris offices and growingly from firms on the continent. After studying law in France, S.B. left for Vanuatu, as a 'conscientious objector',²³ where he became public prosecutor at the country's independence in 1980; he then studied international law in Australia, 'a rare vocation' at the time. After working at the Cr dit du Nord for two years in financing, he moved to Gabon, as an associate at Fidafrica, the legal branch of PricewaterCoopers (PwC), where he worked until 1998. In this capacity, he became the counsel of Samuel Dossou Aworet - Gabon's 'Mr Oil'. 'In Gabon I did everything: social security law, labour law. You needed to be able to deal with emergencies, relentlessly. (...) Twenty-five years ago, when I started, people were telling me: "he is doing tam-tam fusions". (...). I became a project lawyer once back in France. But I had carved out this competency with the knife and the d*** ('la bite et le couteau'). The new generation, they have not really ever been in Africa. They will never be "real" Africans. This does not mean they don't do good work. But I would like to see them in crises situations (...). Crisis management: it starts with me. In 95% of cases, the dispute is solved through settlement, especially in Africa. (...) These young lawyers, I would like to see them in a crisis situation. At some point, you need to stand straight, respectfully, and return to the law.'

Taming the market for commodities: financialization and global regulation

The conversion of this 'White African' as a vocal proponent of the 'social responsibility of corporations,' notably as a member of the Corporate Social Responsibility Committee of the American

²¹ See 'CPI. Laurent Gbagbo victime de la Fran afrique selon ses avocats', RFI, 2.2.2016.

²² Personal interview with S.B. Herbert Smith Freehills, Paris, 7.4. 2015, my translation from French. Further quotes derived from this interview.

²³ The technical alternative to the military service.

Bar Association, can be explained by external shocks - politically and economically driven - that have contributed to restructuring the social structure of this small niche of counsels of corporations and African heads of state. The growth of this legal market can be attributed in part to the increased, in the last ten years, financialization of commodities markets, and with it to the growing technicality of dealings on the continent²⁴ - a development for which corporate law firms, with their collective *know how*, from the negotiation of contracts to arbitration - can be better positioned. The 2008 financial crisis and, before that, the Enron scandal in 2002 which precipitated the demise of Andersen and shed light on the conflicts of interest of consulting firms, like PwC, until then the most thoroughly and widely pre-positioned in the African continent, also opened new opportunities for corporate law firms towards these new emerging economic markets.²⁵ Other global drivers help explain the dynamics of this enlargement. On the one hand, incentives for the global regulation of dealings between foreign corporations and states in Africa, though for the most part a set of soft law (corporate social responsibility) non-binding on corporations have had an increased effect on the operations of corporations on the continent, due to their reputational costs: in particular, the growing reach of the 1977 US Foreign corrupt practices Act (FCPA) against corruption, and the Extractive Industries Transparency Initiative (Rich and Moberg 2015). But extractive deals in the African continent are also heavily impacted by development policies and the role of invisible actors sitting at the negotiation table - the World Bank, and bilateral development agencies - a trilateral relation between development donors, corporations and states that is specific to the African context. Many lawyers in the 'Africa club' thus got their introduction to the developing continent by working on sovereign debt restructuring in the 1980s. The waves of privatization of extractive industries - spearheaded by the World Bank through the 1980s opened up opportunities for corporate lawyers, and so did the promotion of 'public-private partnerships' from the early 1990s, as they place the contract and the lawyer at the heart of the relation between the public sector and the private sector (see Vauchez 2012 a.: 79).

Driven foremost by the need to stabilize investments for foreign corporations - against challenges to extractive contracts, like national fiscal policies of 'upwards adjustments' (so-called 'resource nationalism'), and jurisdictional contests - a number of endeavours have aimed at 'levelling the playing field' between foreign corporations and African states. For example, the Connex Initiative (Strengthening Assistance for Complex Contract Negotiations) spearheaded by the German government during its presidency of the G7 in 2014 thus aimed at drawing a 'code of conduct' to 'strengthen advisory support to low-income country governments in their negotiation of complex commercial contracts - to make the support that is available more comprehensive and more responsive

²⁴ See UNCTAD, 'Don't blame the physical markets: financialization is the root cause of oil and commodity price volatility', Policy Brief, 25, September 2012.

²⁵ See 'Attack of the bean counters', *The Economist*, 21 March 2015.

to government's needs and to contribute to fairer, more sustainable investment deals.²⁶ The African Legal Support Facility set up in 2010 in Abidjan under the umbrella of the African Development Bank - and the sponsorship of the NGO Transparency International - similarly endeavours to provide assistance to African countries to strengthen their legal expertise and negotiating capacity in debt management and litigation, natural resources and extractive industries management and contracting, investment agreements, and related commercial and business transactions. For both initiatives, a core aim is therefore to restructure legal services to African states away from a charismatic market of shadow advisors, towards an enlarged market of services to states.

The 'Africa' Bar in Paris: offshore, yet connected

But the impact of these changes on the 'Africa club' in Paris needs to be related to two other connected dynamics: the structuration of the corporate Bar in Paris; and the threads of relations between France and its former colonies. Both define the access and the distribution of positions in a space whose structure has been transformed under the impetus of the 'Wall street' law firm model, but whose boundaries remain defined by the capacities to access and juggle with poles of power (economics, politics, social) shaped by the relations between Paris and its former colonies. The following series of trajectories illustrate the dynamics that have shaped the structure and transformation of the 'Africa' Bar in Paris. These portraits of four lawyers, indeed, underscore a clear generational break between the tenors of the 'Africa club' and a younger generation - both more technically savvy and more concerned with the stakes involved in developing the operations of their firms on the continent - including the need to co-opt and train local interlocutors. All four trajectories, however, remain connected to the web of relations (political, economical, social) that connect this market between French and African settings.

Two tenors of the 'Africa Club'

J.-C.P. receives me in his spacious office - the first time during this fieldwork: a room with softened light, strewn with African masks, fabrics, a picture on the wall showing the basketball team of Zaïre in the 1970s - featuring a young J.-C.P. A friend of S.B., the mentor of T.L (see portrait below), J.-C. P. is hailed as the 'historical Godfather' of the 'Africa Club' in professional publications.²⁷ This amiable

²⁶ See Code of Conduct of the G7 CONNEX Initiative, http://www.bmz.de/g7/includes/Downloadarchiv/150505_CONNEX_Code_of_Conduct_final.pdf (last accessed 29.5.2016).

²⁷ See <http://lemondedudroit.fr/nominations-profession-avocat/171742-mcdermott-arrivee-dune-nouvelle-equipe-a-paris.html> (last accessed 29.5.2016).

French, white, lawyer, now well in his eighties, explained having entered the field 'by accident.'²⁸ 'My trajectory is unusual. I obtained a scholarship from the US Officers' Wives Club after the war to go study in the US'. After obtaining a JD, he entered the US corporate law firm Duncan Allen & Mitchell, before being dispatched by the firm in 1974 to Kinshasa, the capital of then Zaïre. The firm wanted to set up a local office: 'The associate there was an American 'with big boots,' the son of an infrastructure entrepreneur. He did not have the sensitivity to work for Africans. At first, I was not interested, but I decided to stay. At the time (in New York) there was hardly any international work, I never saw clients. There I could combine the two.' The context was also that of the 'white elephants' infrastructure projects in Zaïre (see Verhaegen 1985). 'Mobil, Texaco, First National Citibank: business was booming.' He went back to Paris at the end of the 1970s as an associate of the US corporate firm Coudert Brothers. 'A month later, I was contacted by Air Zaïre, to be the advisor of the (Congolese) presidency. As counsel to the presidency, he undertook the reform of the pharmaceutical sector, and was also in charge of military contracts and of course the negotiation of bank loans. 'I came back to Paris. I was then inevitably branded with an "African" label. Due to my Zaïran background, I have always done mining law. But I became a generalist "African."' He developed Coudert's Africa practice – with, and that was exceptional at the time, a team of African lawyers. 'At the time, Coudert was the only firm to do international law. If you came to Paris (to work at the Paris office of a US/UK corporate law firm), it was, as a Frenchman, automatically to do international law. After the disbanding of Coudert in 2006, he moved to the Paris branch of the US firm Dewey and Leboeuf and then that of the Canadian firm Fasken Martineau, both since disbanded. While these changes illustrate the fast moving pace of the market for corporate law (with mergers etc.), he also brought with him his teams, now striving to re-constitute the 'Africa' teams he had developed at Coudert. 'We do not do off-shore law. But we do not need to work with local lawyers. Any way, if clients contact us, we can do the work, we do not need to go through local lawyers.'

In turn, T.L. was admitted to the Bar in Paris in 1991, before entering Jeantet & Associés in 1992. As an associate and chair of the Energy, mines and infrastructures department - focused predominantly on Africa - at the French corporate law firm, T.L. is also an academic: with a research master of laws in international law and international trade law in 1981, a master in international and comparative energy law in 1982 from the University Paris I-Sorbonne, a visiting scholarship at Berkeley in 1983-1985, and a PhD of law from the University Paris XIII on 'contracts related to the exploitation of natural resources,' he now is also a law professor at the University Paris II, where he heads the diploma on international economic law in Africa. This academic profile is a specificity of the *alma mater* of French corporate law firms, Jeantet et Associés. Founded in 1922 by Pierre Lepaulle, the first French man to obtain the *Scientiae Juridicae Doctoris* at Harvard, joined by

²⁸ Personal interview with J.-C. P., McDermott, Will and Emery, Paris, 5.5. 2015, my translation from French. Subsequent quotes derived from this interview.

Fernand-Charles Jeantet after the Second World War, himself a law professor at Harvard and a specialist of competition law.²⁹ In the framework of the Marshall plan, the firm played an instrumental role to further the implantation of US corporate law firms in Europe - through Paris - and to develop European community law. Before entering Jeantet, T.L. had worked for five years at Coudert as well as at Total: 'the preparation of files (contracts, project finance), it has a snowball effect. Reputation is difficult to establish, but once it's there, it's there.' Once at Jeantet, 'I set up the energy structure in 1993. It was the only one, focused on energy and natural resources, to provide for the whole gamut of services - contracts and arbitration. We have a single team that can deal with both. So if the market moves, one of the poles can compensate for the other.'³⁰ 'When I started, I was derided. Everybody was criticizing the endeavour (...). We were the only law firm with a local office in Africa, from the colonial era, then in Algiers, because Jeantet was from there. I innovated, I brought in an African to the office (it was Pascal Agboyibor).' T.L. is now orchestrating the setting up of a local branch of the firm in Casablanca, in Morocco - with the idea of 'developing the practice of the firm' in Morocco.

Two members of the 'new guard'

Hailed as one of the prominent corporate lawyers operating in dealings in Africa in the 2015 rating of *Jeune Afrique*, D.B., of counsel at the Paris office of the US corporate law firm Jones Day since 2010 predominantly counsels corporations – recently for the negotiation of a concession for the airports of Antanarivo and Nosy Be in Madagascar, on behalf of a consortium led by Bouygues and Aéroports de Paris; as well as states, as the counsel of Guinea in the Simandou project for the extraction of iron ore by the Australian mining corporation Rio Tinto.³¹ After a master in public and administrative law in Paris, he had a stint at the European investment bank, before working at Herbert Smith Freehills - under the mentorship of S.B. - between 2001-2010: 'I did not turn to Herbert Smith Freehills by accident. At the time, it was the only law firm which provided services to both states and corporations in Africa.'³² 'I have a background in public law. Administrative law is a supporting science in France. I did not want to be a "support" lawyer. I wanted to do transactions.' 'Most of my experience is for the private sector; but I am starting to work also for the public sector, but it is less lucrative. (...) It is not an altruistic stance. Upstream (before projects are negotiated), you have an increased involvement of development actors. Millions of pages have been written on public-private partnerships, but there is a

²⁹ See 'Les cabinets d'avocats d'affaires', Décideurs. Stratégie, Finance, Droit. Guide, 2010; see also Vauchez 2012 a.

³⁰ Personal interview with T.L., Jeantet et Associés, Paris, 28.4.2015, my translation from French. Subsequent quotes derived from this interview.

³¹ 'Les avocats qui ont marqué 2015', *Jeune Afrique*, 20.12.2015.

³² Personal interview with D.B., Jones Day, Paris 9.4.2015, my translation from French. Subsequent quotes derived from this interview.

tendency to ritualize these tools. It's the problem of transplants.' However, 'relations with local lawyers (in Africa) are extremely complicated. In Bangui, we simply had to "create" our local respondent. Because there were simply no corporate lawyers. (...) In some countries, our local respondents do not want to take orders. There is a locking-up of the local legal market.'

In turn, B.M., a partner at the British corporate law firm Eversheds LLP where he heads the 'Africa Group' of the firm in Paris – obtained masters in common law and corporate law, before working for Total in 1995, and Landwell PwC (PwC's legal office in Paris) between 1995-2000, where he worked for a while under the aegis of S.B. 'I left in 2000 because I was looking for a smaller structure. I developed Eversheds' practice in Africa between 2000-2007. I managed to convince colleagues of the relevance to work on Africa.'³³ After launching the 'Africa Group' of the firm in 2007, he contributed to developing its 'Africa Law Institute' a network designed to enable members of its 38 partner organizations in Africa (in both Francophone and Anglophone Africa) to access training. With now eight local offices on the continent - in Casablanca, Johannesburg, Mauritius, Morocco, Tangier and Tunis³⁴ - the firm has also been at the fore-front of the development of the OHADA (Organisation pour l'harmonisation en Afrique du droit des affaires) system in West Africa, including through an OHADA law diploma delivered to Francophone - French and African - students by the Universities Panthéon-Assas and Paris 13 since 2014. 'I think a lot of firms vindicate an opening towards Africa, but they are very far from having achieved it. We took risks. Some individuals work predominantly on oil, minerals. I have had a much wider portfolio of activities, from the start. As a firm, we provide a full service.'

Lawyers on top, lawyers on tap: reshuffling the cards in the distribution of positions within the 'Africa' Bar in Paris?

As these portraits illustrate, the dominant position of US and UK corporate law firms can be linked, firstly, to the transformation of the 'corporate' Bar in Paris. The demise of the 'Republic of Lawyers' following World War II translated in a gradual replacement of lawyers as the main state elites, with an administrative-political elite. The relatively recent 'return' of the profession to politics - illustrated by the move of former politicians to legal practice - has opened up a 'contiguous' space of circulation between the legal field and the political field (Vauchez 2012 a.). This was favoured by changes in the regulation of the French legal profession, notably the widening up from 1991 of the rules regulating the access to the profession, and foremost its *aggiornamento* from the 1990s under the influence of US

³³ Personal interview with B.M., Eversheds, Paris, 8.4.2015, my translation from French. Subsequent quotes derived from this interview.

³⁴ H. Gannagé-Stewart, 'Eversheds and Norton Rose Fullbright ramp up in Africa with local alliances,' *The Lawyer*, 25.2.2015.

and UK corporate law firms (Dezalay 1996). The impact of this globalization of corporate law - notably the managerialisation of the French legal field as a whole according to the model of the Wall street law firm - was all the more powerful given the long-standing shunning of economics and corporate matters within a legal profession more willing to endorse 'political' causes. In the 1950s there were only a handful of corporate law firms, and the growth of a corporate legal market in France, foremost in Paris, followed the drive of these pioneers, like Fernand-Charles Jeantet themselves converted to the Wall street law firm model, based on their experiences in the US and the UK, in the context of the emergence of the European economic market (Vauchez 2012 b.).

On the other hand, the strategic position of Paris in the political, legal and economic world order of the post-world war II and Cold war era has played a decisive role in the structuration of the 'Africa' Bar in Paris and helps understand the structuration of positions within it. The international and regional legal framework that was institutionalized from the turn of the twentieth century, and further in the wake of World War II, specifically excluded colonies from the ambit of human rights and international law (Madsen 2004); and this also applied to the distribution of natural resources and conflicts over them (see Feichtner 2015). This meant that the growing conflicts that mounted up to the waves of independence of the early 1960s were treated as 'domestic' matters. But the politics of the Cold war also reinforced the symbiotic and reciprocal relation between the field of state power in France and that of its former African colonies - economically, legally, politically and relationally. The International Chamber of Commerce had been set up in the early 1920s in Paris out of a transatlantic alliance between a US legal elite with considerable economic and political clout, and a small international legal community in Europe then relatively marginalized from diplomatic and doctrinal hierarchies. Building Paris as an 'offshore' basis for the arbitration of disputes between corporations and states aimed specifically at shielding these conflicts away from political and diplomatic interests. But, until the expansion of the market for arbitration from the 1980s (Dezalay & Garth 1996) and throughout the bulk of the Cold war, the conflicts spurred by the nationalization of oil and other strategic resources of the 1960s and 1970s in the newly independent states were managed through diplomacy, the threat of gun-boats, and personal political relationships between political elites in France and its former colonies - something that was favoured by French politics as the 'gendarme of Africa' (see S. Dezalay 2011).

Further, while the politics of the 'cultural Cold War' - including the anti-US stance of President De Gaulle and Mitterrand, were a key driver in the expansion of the human rights field in France (e.g. Dezalay and Garth 2006), decolonization struggles, notably the Algerian war, were also instrumental in the reawakening of the French 'old lady' of human rights organizations, the Ligue des droits de l'homme et du citoyen (LDH) through its international branch, the FIDH. But these political struggles did not only contribute to the political and ideological spectrum of positions, in France, over its relations with its former colonies. They also built on a reciprocal web of relationships and

socialization. While former colonial administrators were re-instated within the ministry of Cooperation (Meimon 2007) they also played a key role to inscribe cooperation relations and development with African states in the nascent European Commission (Dimier 2003). Emblematically, the Paris Office of the Secretariat International of Amnesty International was set up in 1978 precisely to benefit from the position of Paris as a stop gap - where African political elites had studied and as refuge for exiles and opponents - bringing the organization to play into dynamics of 'reciprocal assimilations of elites' (Bayard 2009) whereby political elites would be by turn defended as opponents or denounced for their human rights violations (S. Dezalay 2007). From a juridical point of view, furthermore, at the level of norms, institutions, education, as much as legal professions, decolonization was a very slow process. While French magistrates continued to be detached to former colonies throughout the 1970s - due to the relative lack of trained lawyers locally - these webs of relations are still instrumental: be it for the training of new legal elites, in France, and the endorsement of new law professors in Francophone Africa through the 'agrégation' still to date chaired by French professors; or the mentor-pupil relations that partake in the selection of international arbitrators or counsels for the settlement of disputes between African states and international corporations over the distribution of natural resources (S. Dezalay and Dezalay forthcoming).

These developments have deeply shaped the barriers of entry into the 'Africa' Bar in Paris: either from corporate (such as by using the platform of a corporation like Total), political or militant ties - but better still with all three types of resources at the same time, such as in the case of William Bourdon, who is all the better positioned to hail as a vocal proponent of the criminalization of corporate crimes, that he is well connected to corporate milieux. The same applies on the other end - militant - of the spectrum: the Comité Catholique contre la Faim (CCFD), one of the drivers of the complaints for the 'ill-gotten wealth' of African heads of state in France - lodged by William Bourdon - was also built out of French missionary colonial networks on the African continent (see S. Dezalay 2011). But part of the success of US and UK corporate law firms in dominating the commodities legal market in Paris also holds in the huge capacity of firms - as opposed to single legal practice - in dodging the volatility of the market, including by waging multi-front legal strategies: in contract negotiation and in arbitration. As underscored by a respondent: 'the difference between Agobyibor and others is the structure of the firm: it is better than having lone lawyers doing all the work.'³⁵ Yet - it is also no accident that predominantly French lawyers operate within these offices. This enables these firms to build on a symbolic displacement away from the stigmata of the *Françafrique*, while still also benefiting from the *know who* of these lawyers. The US corporate law firm White & Case, for example, secured a foothold in Africa in the 1990s when it represented Algeria in the restructuring of its external debt - the choice of a US firm being then a decidedly anti-French and anti-colonial stance.

³⁵ Personal interview, A.M.D.F.A., Fairlinks, Paris 2.7.2015.

This embeddedness of the 'Africa' Bar in the fabric of French-African relations has also shaped the clientele - states and corporations - of law firms operating in Africa. 'In the 1970s Elf had its own legal services. They would never even had the idea of calling in corporate lawyers. These inside advisors were from the *Corps des Mines*³⁶, explained a long term French associate within the Paris office of the US law firm Cleary Gottlieb Steen & Hamilton.³⁷ Further, 'banks orient dealings in Africa, mainly US and UK banks. The French have always done business in Africa. Though they rarely invest. For Anglo-Saxon law firms (having an Africa department) is certainly a marketing strategy'³⁸ towards a corporate clientele of new-comers into the continent. An American partner at the Paris office of the UK firm Clifford Chance Europe LLP explained: 'if you look at law firms' expansion, it is through finance project, and generally development and financing. At the moment, almost 100% of my time is on Africa (...). We turned to Africa in the context of the crisis, in the late 2000s. I am not sure they will stay after the market picks up. Because it is certainly a lot easier to do business in New York. (...) The firm recognizes that its business in Africa is not the most lucrative. But we want to be a blue-chip firm that corporations look to.'³⁹ A partner at the US firm Jones Day explained how this 'blue chip' strategy worked, in terms of specialization within this small market: 'when you look at the corporate side, it is a lot more firms. It is the same for everything else: you do one transaction and then you become a specialist (in mining, oil, infrastructure) but when you look at the government side it's completely different.'⁴⁰

It is perhaps on the side of services to states that the transformation of the 'Africa' Bar in Paris is the deepest. When J.-C. P., the 'Godfather' of the 'Africa club,' started, 'there was not much regulation. 'We still work a lot for states, but it is mostly private practice. The practice of counselling for states has evolved. It is more transparent, more open. Now it works a lot on the basis of tenders. Before it was through encounters; presidents and political advisors would meet their counsels by chance encounters, in restaurants. Now - except as regards counsels to presidents, where it is different, it is all on the basis of tenders.'⁴¹ Initiatives such as Connex or the African Legal Facility mentioned above aim precisely at transforming the still very much dual, structure, of legal services provided within this small market - between lawyers counselling states or corporations on the one hand, during the phase of contract negotiations; and, on the other hand, lawyers acting as counsels in case of disputes before arbitration or jurisdictional forums. 'African governments make a mistake when they do not have a counsel of the same level'⁴² during the phase of negotiations: 'they look for the best bidder. It is only when there is a crisis, when the dispute goes to arbitration that they call in the big

³⁶ The Corps des Mines is the technical Grand Corps of the French state, which trains the state engineers of the mines.

³⁷ Personal interview with J.-P. V., Cleary Gottlieb, Paris, 29.4.2015.

³⁸ Personal interview with J.-C. P., McDermott, Will and Emery, Paris, 5.5. 2015, my translation from French.

³⁹ Personal interview with A.G., Clifford Chance, Paris, 5.5.2015.

⁴⁰ Personal interview with B.D., Jones Day, 1.4.2015 (by phone).

⁴¹ Personal interview with J.-C. P., McDermott, Will and Emery, Paris, 5.5. 2015, my translation from French.

⁴² Personal interview with A.G., Clifford Chance, Paris, 5.5.2015.

shots. The law then is dealt with at the highest levels (...). Connex: it is an intelligent initiative. But the sticking point was that the Germans (just as other development partners) wanted services to states to be pro bono. Why ask law firms to do pro bono work? It's beautiful, but it's neo-colonial. If you want to re-structure the market, you need to do it right.⁴³ At play in this battle is also a question of gaining access to the continent. Opening the market of services to African governments - including through pro bono endeavours - has thus been a key strategy of US and UK corporate law firms. As explained by a partner at Jones Day - based in the New York office of the firm, but one of the promoters of the Connex initiative: 'you cannot make a career on Africa. Africa work is either for corporations or governments. For corporations it is primarily energy, project finance. You can do that full time. But you cannot do government work full time. It cannot pay. There is no way you can make billable hours working for a government. It is a different way of doing business. If I have a corporate client, they will call me and ask me for the costs, then they will call back, and they will say: "let's move." With the governments, they never pay. There is always an international organization that pays. They always have a tender process that takes months, a technical proposal, a financial proposal that will take forty hours. And this, you cannot bill. My credentials are pretty well known. For instance, when GIZ (the German development agency) call, they know me, but still it takes months'⁴⁴

The difference indeed, lies in the *know who*: 'Then you have those people who have the *know how*, like Pascal Agboyibor. But those can also speak to heads of state. That is something else. It is also a question of positioning.'⁴⁵ Pro bono initiatives thus would tend to displace slightly the interpersonal relations between Paris based lawyers and their political counterparts in African settings towards the framework of development assistance, but still reinforce the stronghold of those with capacities of access built out of a portfolio of political, economic, social and legal resources. Yet – the position of Agboyibor and his difficulties in setting up a local branch of Orrick in Abidjan also highlight the thorny path of this new phase of globalization into the African continent. As interjected by the Godfather of the 'Africa' Bar: 'International law firms are scared to be outpaced by local lawyers.'⁴⁶ The offshore – yet connected – structure of the Africa Bar in Paris could thus be long term - depending on the pace of development and varied structure of national legal fields on the African continent.

4. Extractive economies in Africa as a petri-dish of layered and connected stories of legal globalization: stakes for an open research agenda

⁴³ Personal interview, A.M.D.F.A., Fairlinks, Paris 2.7.2015.

⁴⁴ Personal interview with B.D., Jones Day, 1.4.2015 (by phone).

⁴⁵ Personal interview with A.M.D.F., Fairlinks, Paris, 2.7.2015.

⁴⁶ Personal interview with J.-C. P., McDermott, Will and Emery, Paris, 5.5. 2015, my translation from French.

In media and specialist accounts, talks of the end of the commodities 'super cycle' - and with it, the fear of African states plunging into the debt crisis of the 1980s - have re-ignited the 'resource curse' or 'Dutch disease' debate which connects the vulnerability of resource-rich African economies to the weakness of domestic governance mechanisms (e.g. Collier 2007) and the desirability of governing trade and financial flows globally (e.g. Rich & Moberg 2015). In policy, media and many scholarly accounts this weakness of Africa economies is linked to the failure of the legal systems inherited from colonization (see World Bank 2003): the need to reform - if not reinvent - political, legal and economic institutions is heralded as a way to check the tendency towards personal, tyrannical and anti-entrepreneurial governance (Acemoglu & Robinson 2001). Yet - the thriving of private foreign investments in the very countries hailed as 'failures,' like Angola or the Democratic Republic of Congo (Ferguson 2006) opens a much more complex image than the mere economic dependency of the continent - notably with the expansion of a 'Beijing consensus' freed from political conditionality and outside the scope of US imperial politics (Halper 2012). Meanwhile, while contracts over extractive resources are moulded into autonomous legal islands - with their own '*lex petrolea*' or '*lex extractiva*' rules shielded away from democratic overview and national judicial proceedings, the growing contests by local communities, often spearheaded by international NGOs (Lhuillier 2013) continuously expand the terrains of the law to navigate between the shadow and official routes of commodity extraction and question the distribution of these resources for societal development (e.g. Brett 2015). 'It is precisely this dialectic that has pushed Africa (...) to the vanguard of the epoch, making (these old margins) at once contemporary frontiers and new centres of capitalism - which, to reiterate, in its latest, most energetically voracious phase, thrives in environments in which the protections of liberal democracy, of the rule of law, of the labour contract, and of the ethics of civil society are, at best, uneven (Comaroff & Comaroff 2012: 19). Indeed, as this paper has attempted to highlight: the renewed - advocated or contested - prominence of the African continent in the global distribution of natural resources opens an opportunity, and needed inquiry, to assess the relationship between capital investment, politics and law in these transformations.

The position of the 'Africa' Bar in Paris underscored the relevance of looking at the past to understand these changes, and how 'Africa' was built into a new legal market. Paris was a nexus of 'connected histories': US-led corporate legal globalization, colonial and postcolonial relations, and currently the global competition between the US, Europe and powerful new economic and political centres, like China. These connected and layered developments help understand historical change, including legal developments, in sequence, as a 'revival' where 'the colonial imprint of law provides the core that defines the revival' (Dezalay & Garth 2010:2). Indeed the rich and recent scholarship on empires (e.g. Cooper and Burbank 2010) has traced paths to define a future research agenda to connect state and legal developments, with economic models of extraction on the African continent and transformations in the structure of the global economy. Arguably - the era of European colonial

empires in Africa was exceptional - both in scale and time, but there was a remarkable gap between the ambition of 'modern' colonialism in terms of social, technological innovations and the limited spaces of deployment of colonial rule (Cooper & Burbank 2010). Indeed, compared to other regions, such as Asia, one perhaps singular specificity of the colonial enterprise in the African continent, is its extreme diversity - between colonies of settlement, extraction, etc. This uneven and patchy colonial enterprise left fragmented societies and great diversities of economic conditions in their wake. While 'legal pluralism' as the legal vehicle to accommodate diversity and meagre colonial resources became a constant and general fix of colonial rule (e.g. Benton & Ross 2013; Schmidhauser 1997), the legal institutions and professions that emerged out of the colonial era were vastly varied across regions, even sometimes in the same countries, according to the specificities of colonial legal, economic and political strategies at the local level (e.g. S. Dezalay 2015).

The boon of extractive economies from the slave trade, through to the 'modern' colonial era, make them a paradigmatic site, to reiterate, to trace the uneven and unequal connections between Africa and the world (Cooper 2014): not only because of the symbiotic relationship in the development of modern capitalist economies in the *métropoles* which built out of their imperial synergies (e.g. Etemad 2005) and the colonial roots of the contemporary legal and economic international system (e.g. Feichtner 2015); but also because of the way the impetus for extraction shaped the colonial and post-colonial field of state power in African settings. Tracing this colonial imprint is instrumental to map out the postcolonial trajectories of African states, economically, politically – and legally. Cooper's image of the 'gatekeeper state' (2004) is a useful entry-point to look at this evolution both at the domestic level - in the legal, political and social ramifications of extractive economies nationally - and in the relation between resource-rich states with global markets, former *métropoles* and the capitals of finance, development institutions and foreign corporations. Thus, the logic of 'ring-fencing' the oil industry in Angola, away from the wider economy of the state (see Ferguson 2006) contrasts with the economic path taken in South Africa from the turn of the twentieth century, which tightly articulated the exploitative dimension of the mining industry with a wider social development project. These two contrasted economic models - replicated in varied modes over the continent - impact on the 'resource course' of the dependency on primary commodities for the wider national economy. They also contribute to shaping the routes, shadow and official, of capital flows, as much as the dynamic of capitalist expansion within the continent, including the varied breath of the South African corporations and corporate legal firms in the continent (see Breckenridge 2011; Klaaren 2016).

On the other hand, the structure of commodities markets and their evolution from the pre- and colonial eras (from the slavery trade onwards) has continuously played into contests at the local, national and international levels, which were also heavily mediated by lawyers, often from the *métropoles* but also in some settings like Ghana and Nigeria local lawyers: between merchants,

colonial administrations and local elites (e.g. Luckham 1978; Oguamanam and Pue 2006; by extension, on the 'colonial state' Steinmetz 2008). These layered connections and contests have shaped the subsequent waves of restructuring of extractive economies nationally - from the post-independence waves of nationalization, to the 'neo-liberal' privatizations of the 1980s through to the current re-instating of the state as a development partner in 'public-private partnerships'. They are also at the core of contests over the definition of 'development', as a responsibility of private extractive corporations, development institutions and NGOs, or that of the state (e.g. Coyle 2015). Further, the highly fragmented structure of the global market for minerals, which gives the upper hand to private corporations (mostly Northern) in the production, pricing and investment decisions,⁴⁷ while allowing for the multiplicity of intermediaries, from local chiefs through to red-neck extractive companies less vulnerable to reputational costs (Rubbers 2013), plays into the, relative, breadth and scope of global regulatory frameworks, themselves shaped by intense economic and political struggles between the US and Asia (Garapon & Servan Schreiber 2013).⁴⁸

Law is at the core of these developments. Initiatives aiming at transforming the asymmetrical relationship between African states and private Northern corporations - like Connex or the African Legal Facility - stem from the need to stabilize foreign investments, away from the costs - economical, political, reputational – of the re-negotiation of extractive contracts, their contests in arbitrational and jurisdictional settings, including by third parties like local communities. The vindicated challenge thus, of 'levelling the playing field' is to foster the emergence of trade-oriented national state elites but also to control, rationalize and open up the small markets of insiders – such as those multi-tasked members of the 'Africa Club' in Paris away from the stigmata of *affairisme*. What made the 'Africa' Bar in Paris offshore yet deeply connected was the tension between the need to rely on local structures of power to do business on the continent, and the strategy of evading local legal institutions - deemed inefficient, corrupted. But at stake is also the intense competition at play in this new wave of globalization into the continent, with international corporate law firms vying to secure their turf in a volatile and fragile market, against local competitors. The stake now, in the next step of this research agenda is precisely to zoom in onto these local legal markets to trace their transformation over time in relation to national fields of state power, regional dynamics and their connexions with former *métropoles* and new poles of global power.

Indicative bibliography

⁴⁷ See P. Stevens, J. Kooroshy, G. Lahn and B. Lee, 'Conflict and coexistence in the extractive industry', Chatham House Report, November 2013; B. Kooroshy and F. Preston, with S. Bradley, 'Cartels and Competition in mineral markets: challenges for global governance', Research Paper, Chatham House, December 2014.

⁴⁸ See also D. Brautigam, '5 myths about Chinese investment in Africa,' *Foreign Policy*, 18 December 2015.

- D. Acemoglu & J. Robinson, 'The Colonial Origins of Comparative Development: An Empirical Investigation,' *American Economic Review*, 91, 2001, pp. 1366-1401.
- C. Barszcz, 'La typologie de la profession d'avocat : l'exemple des avocats d'affaires', *Pouvoirs*, n°140, 2012, p. 21-32.
- J. F. Bayart, *The State in Africa. The Politics of the Belly*, 2nd ed. New York, Cambridge University Press, 2009 [1989].
- L. Benton & R. Ross (ed.), *Legal Pluralism and Empires, 1500-1850*, New York University Press, 2013.
- R. Bertrand, 'Dix mots pour un Empire', *Le Monde, Hors-Série*, Oct.-Dec. 2015, pp. 18-29.
- P. Bourdieu, 'Esprits d'Etat: Genèse et structure du champ bureaucratique.' *Actes de la recherches en sciences sociales*, 1993, 96-97, pp. 49-62.
- P. Bourdieu, *Sur l'État. Cours au Collège de France (1989-1992)*, Paris, Seuil, 2012.
- K. Breckenridge, 'Special rights in property, why modern African economies are dependent on mineral resources', In C.A. Bayly, V. Rao, S. Szreter and M. Woolcock (eds.), *History, Historians and Development Policy: A Necessary Dialogue*, Manchester: Manchester University Press, 2011.
- P. Brett, 'Cause lawyers sans frontières: juristes sud-africains et judiciarisation du politique en Afrique australe', *Politique africaine*, 138, 2015, p. 93-113.
- J. Brundage, *The Medieval Origins of the Legal Profession*. Chicago: University of Chicago Press, 2008.
- T. Burgis, *The Looting Machine. Warlords, Tycoons, Smugglers and the Systematic theft of Africa's Wealth*, Londres, Harper Collins Publishers, 2015.
- P. Collier, *The bottom billion. Why the poorest countries are falling and what can be done about it*, Oxford University Press, 2007.
- J. Comaroff & J. L. Comaroff, *Theory from the South. Or, How Euro-America is evolving toward Africa*, Boulder, London, Paradigm Publishers, 2012.
- F. Cooper, *Africa since 1940. The Past and the Present*, Cambridge, Cambridge University Press, 2002.
- F. Cooper, *Colonialism in Question: Theory, Knowledge, History*, Berkeley, University of California Press, 2005.
- F. Cooper, *Africa in the world. Capitalism, Empire, Nation-State*, Harvard University Press, 2014.
- L. Coyle, 'Tender is the mine: law, shadow rule and the public gaze in Ghana', In C. Walker-Said and J. D. Kelly (eds.), *Corporate social responsibility? Human Rights in the New Global Economy*. The University of Chicago Press, Chicago and London, 2015.
- S. Dezalay, 'Gérer un conflit armé comme une cause judiciaire : l'exemple d'Amnesty International en Côte d'Ivoire', *Critique internationale*, 2007, 36, p. 55-70.
- S. Dezalay, *Revamping Law by Circumventing the State. Non-governmental organizations in the international management of social violence on the African continent*, PhD of Laws, European University Institute, Florence, 2011.
- S. Dezalay a., 'Les juristes en Afrique: entre trajectoires d'État, sillons d'empire et mondialisation', *Politique africaine*, 2015, 138, pp. 5-23.
- S. Dezalay b., 'Law and lawyers in Africa: stakes for an open research agenda,' draft trend report, 2015, unpublished manuscript.
- S. Dezalay (with the collaboration of Y. Dezalay), 'Professionals of international justice. From the shadow of state diplomacy to the pull of the market of arbitration,' In A. Nollkaemper, J. d'Aspremont, W. Werner & T. Gazzini (eds.), *International Law as a Profession*, Cambridge University Press, forthcoming.
- Y. Dezalay, *Marchands de droit. La restructuration de l'ordre juridique international par les multinationales du droit*, Paris, Fayard, 1992.
- Y. Dezalay and B.G. Garth, *The internationalization of palace wars. Lawyers, economists and the contest to transform Latin American states*, Chicago, The University of Chicago Press, 2002.
- Y. Dezalay and B.G. Garth, 'From the Cold War to Kosovo: The Rise and Renewal of the Field of International Human Rights', *Annual Review of Law and Social Science*, 2006, 2, p. 231-255.

Y. Dezalay and B. G. Garth, *Asian Legal Revivals. Lawyers in the Shadow of Empire*, London, University of Chicago Press, 2010.

Y. Dezalay and B.G. Garth, 'State politics and legal markets', *Comparative Sociology*, 10, 2011, p. 38-66.

C.J. Dias, R. Luckham, D.O. Lynch & J.C.N. Paul, *Lawyers in the Third World: Comparative and Developmental Perspectives*, Scandinavian Institute of African Studies and International Center for Law in Development, Uppsala, 1981.

V. Dimier, 'Institutionnalisation et bureaucratisation de la commission européenne: l'exemple de la DG développement' *Politique européenne* 3/2003, 11, p. 99-121.

S. Ellis, *Season of Rains. Africa in the world*, The University of Chicago Press, 2012.

B. Etemad, *De l'utilité des Empires. Colonisation et prospérité de l'Europe*, Paris, Armand Collin, 2005.

I. Feichtner, 'International (investment) law and distribution conflicts over natural resources' In S.W. Schill, C. J. Tams and R. Hoffmann, eds., *International Investment Law and Development. Bridging the Gap*, Cheltenham, UK: Edward Elgar Publishers, 2015.

J. Ferguson, *Global shadows: Africa in the Neoliberal World Order*, Durham, NC: Duke University Press, 2006.

A. Garapon & P. Servan Schreiber, *Deals de justice. Le marché américain de l'obéissance mondialisée*, Paris, Presses universitaires de France, 2013.

É. Gobe, *Les Avocats en Tunisie de la colonisation à la révolution (1883-2011). Sociohistoire d'une profession politique*, Paris, IRMC-Karthala, coll. « Hommes et sociétés », 2013.

T. C. Halliday, L. Karpik et M. M. Feeley (dir.), *Fates of Political Liberalism in the British Post-Colony. The Politics of the Legal Complex*, Cambridge, Cambridge University Press, 2012.

S. Halper, *The Beijing Consensus: How China's Authoritarian Model will Dominate the 21st Century*, Basic Books, New York, 2010.

V. Hugeux, 'La Françafrique fait de la résistance. Communicants, journalistes et juristes français à l'heure de la deuxième décolonisation', *Politique africaine*, 105, 2007, p. 126-139.

B. Ibhawoh, *Imperial Justice. Africans in Empire's Court*, Oxford, Oxford University Press 2013.

E. Kantorowicz, *Les Deux Corps du Roi*, Paris, Gallimard, 1989.

J. Klaaren, 'African corporate lawyering and globalization', *International Journal of the Legal Profession*, 2016: <http://dx.doi.org/10.1080/09695958.2015.1133423>.

M. Koskenniemi, *The Gentle Civilizer of Nations. The Rise and Fall of International Law 1870-1960*, Cambridge University Press, 2004.

G. Lhuillier, 'Minerais de guerre. Une nouvelle théorie de la mondialisation du droit', FMSH Working Paper Series, 36, 2013.

P. Lovejoy, *Transformations in Slavery. A history of slavery in Africa*, Cambridge University Press, 3d ed. 2011.

R. Luckham, 'Imperialism, law and structural dependence. The Ghana legal profession', *Development and Change*, 9(2) 1978, p. 201-243.

M. Madsen, "'Make law, not war". Les 'sociétés impériales confrontées à l'institutionnalisation internationale des droits de l'homme'', *Actes de la recherche en sciences sociales*, 151-152, 2004, p. 96-106.

L. Martines, *Lawyers and Statecraft in Renaissance Florence*. Princeton: Princeton University Press, 1968.

J. Meimon, 'Que reste-t-il de la Coopération française?', *Politique africaine*, 2007, 105, p. 27-50.

C. Oguamanam and W. Pue, 'Lawyers' Professionalism, Colonialism, State Formation and National Life in Nigeria, 1900-1960: "the fighting brigade of the people"', 2006, available at SSRN: <http://ssrn.com/abstract=953313>.

P. Péan, *La République des mallettes. Enquête sur la principauté française du non-droit*, Paris, Fayard, 2011.

E. Rich and J. Moberg, *Beyond Governments. Making collective governance work. Lessons from the extractive industries transparency initiative*, Greenleaf Publishing Limited, 2015.

B. Rubbers Benjamin, 'Les sociétés africaines face aux investissements miniers', *Politique africaine* 3/2013, 131, p. 5-25.

J. R. Schmidhauser, 'The European origins of legal imperialism and its legacy in legal education in former colonial regions', *International political science review*, 1997, 18(3), p. 337-351.

G. Shaffer, J. Nedumpara and A. Sinha, 'Indian Lawyers and the Building of State Trade-related capacity. Minnesota Legal Studies Research Paper 14-08, 2014. Available at SSRN: <http://ssrn.com/abstract=2390673> or <http://dx.doi.org/10.2139/ssrn.2390673>.

J. Seroussi, 'La cause de la compétence universelle. Note de recherche sur l'implosion d'une mobilisation internationale', *Actes de la recherche en sciences sociales* 3/2008, 173, p. 98-109.

G. Steinmetz, 'Le champ de l'État colonial. Le cas des colonies allemandes (Afrique du Sud-Ouest, Qingdao, Samoa)', *Actes de la recherche en sciences sociales*, vol. 171-172, 2008, p. 122-143

G. Steinmetz (ed.), *Sociology and Empire. The imperial entanglements of a discipline*, Duke University Press, 2013.

S. Subrahmanyam, *Explorations in Connected History. From the Tagus to the Ganges*, New Delhi, Oxford University Press, 2005.

M. Terretta, 'Cause lawyering et anticolonialisme: activisme politique et État de droit dans l'Afrique française, 1946-1960', *Politique africaine*, 138, 2015, p. 25-48.

D.M. Trubek, & A. Santos, *The new law and economic development: a critical appraisal*, New York, Cambridge University Press, 2006.

A. Vauchez, 'The transnational politics of judicialization, *Van Gend en Loos* and the making of EU polity', *European Law Journal*, 2010, 16(1), p. 1-28.

A. Vauchez a., 'Élite politico-administrative et barreau d'affaires. Sociologie d'un espace-frontière', *Pouvoirs* 2012/1 (n°140), p. 71-81

A. Vauchez b., 'L'avocat d'affaires: un professionnel de la classe dirigeante?', *Savoir/Agir* 1/2012 (n° 19), p. 39-47.

B. Verhagen, 'Les Safaris technologiques au Zaïre', *Politique africaine*, 18, 1985, p. 71-87.

L. Willemez, 'La République des avocats : le mythe, le modèle et son endossement', In M. Offerlé (ed.), *Profession politique XIXè-XXè siècle*, Paris, Belin, 1999, p. 201-229.

World Bank, *Doing business 2004. Understanding Regulations*, World Bank, the International Finance Corporation and Oxford University Press, 2003.